

## **REMARKS**

The Office Action mailed August 19, 2008, has been received and reviewed. Each of claims 1-5, 7-15, 18-25, and 28-30 stands rejected. Claims 1-5, 7-11, 14, 18-25, and 28-30 have been amended herein. Care has been exercised to introduce no new subject matter. Reconsideration of the above-identified application in view of the above amendments and the following remarks is respectfully requested.

### **Objections**

The Specification was objected to as failing to provide proper antecedent basis for the claimed subject matter. Specifically, the limitation “correspondence rating” allegedly lacked antecedent basis within the originally filed Detailed Description or Drawings. Applicants have amended claims 8, 18, and 28 so that they do not recite “correspondence rating.” Accordingly, Applicants respectfully request withdrawal of the Objection to the Specification.

### **Rejections based on 35 U.S.C. § 101**

Claims 1-5 and 7-10 are rejected under 35 U.S.C. § 101 because the claimed invention was directed to non-statutory subject matter. Claim 1 has been amended to recite a computerized system with computer-executable instruction for managing clinically related supply procurement. As presently amended, the claimed computer program is part of a computer that permits the computer program’s functionality to be realized. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 101 rejection of claims 1-5 and 7-10.

Claims 11-15, 18-25, and 28-30 are rejected under 35 U.S.C. §101 based on Supreme Court precedent, and recent Federal Court decisions. A 35 U.S.C. §101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. Independent claim 11

has been amended to transform the underlying subject matter by “displaying the comparative report on a graphical user interface.” Similarly, independent claim 21 has been amended to transform the underlying subject matter by “displaying the comparison report on a graphical user interface.” Dependent claims 12-15, 18-20, 22-35, and 28-30 also transform underlying subject matter by virtue of their dependency on either claim 11 or 21. Accordingly, Applicants respectfully request the withdrawal of the 35 U.S.C. § 101 rejection of claims 11-15, 18-25 and 28-30.

**Rejections based on 35 U.S.C. § 112**

Claims 1-5 and 7-10 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement because the specification does not contain support for the language “equivalent to those in patient supply data and the care provider preference data.” This language has been deleted from claim 1 by the present amendment. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 112, first paragraph, rejection of claims 1-5 and 7-10.

Claims 21-25 and 28-30 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement because “computer-readable media” allegedly did not find support in the specification. Claims 21-25 and 28-30 have been amended into method claims. “Computer-readable media” no longer appears in these claims. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 112, first paragraph, rejection of claims 21-25 and 28-30.

Claims 1-5 and 7-10 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention because it is unclear what “equivalent to those” refers to. This

language has been deleted from claim 1 by the present amendment. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 112, second paragraph, rejection of claims 1-5 and 7-10.

Claims 1-5, 7-15, 18-25, and 28-30 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention because claims 1, 11, and 21 contain the limitation “and/or.” This limitation has been removed from claims 1, 11, and 21. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 112, second paragraph, rejection of claims 1-5, 7-15, 18-25, and 28-30.

Claims 22-25 and 28-30 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As presently amended, claims 21-25 and 28-30 are all directed to a method. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 112, second paragraph, rejection of claims 21-25 and 28-30.

### **Rejections based on 35 U.S.C. § 103**

#### **A. Applicable Authority**

Title 35 U.S.C. § 103(a) declares, a patent shall not issue when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” The Supreme Court in *Graham v. John Deere* counseled that an obviousness determination is made by identifying: the scope and content of the prior art; the level of ordinary skill in the prior art; the differences between the

claimed invention and prior art references; and secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

To support a finding of obviousness, the initial burden is on the Office to apply the framework outlined in *Graham* and to provide some “articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727 at 1741, 82 USPQ2d at 1396 (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) with approval).” See also MPEP § 2142. “[R]ejections on obviousness cannot be sustained with mere conclusory statements.” *Id.* Thus, in order to establish a *prima facie* case of obviousness the Office must provide “a clear articulation of the reason(s) why the claimed invention would have been obvious” based on factual findings made while conducting the *Graham* factual inquiries. See MPEP § 2143. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicitly. *Id.*

**B. Claims 1-5, 7-15, 18-25, and 28-30 are not unpatentable.**

Claims 1-5, 7-15, 18-25, and 28-30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,991,728 to DeBusk, et. al., (hereinafter the “DeBusk reference”) in view of U.S. Publication No. 2002/0143692 to Heimermann, et al., (hereinafter the “Heimermann reference”). Applicants respectfully assert that claims 1-5, 7-15, 18-25, and 28-30 are not obvious because of the significant differences between the cited references and the claimed invention. Accordingly, Applicants respectfully traverse the rejection, as hereinafter set forth.

Claim 1, as presently amended, recites a computerized system, including a computing device with computer memory containing computer-executable instructions for managing clinically related supply procurement. The system includes a first interface to receive

patient supply data captured from at least one clinically related site, the patient supply data comprising items used by care providers to treat one or more patients during a clinical event. The system also includes a second interface to receive care provider preference data for said clinical event from the at least one clinically related site. The system also includes an analytic engine, the analytic engine communicating with the first interface and the second interface, and generating an analytic report showing a percentage of the care providers that use a clinical item supplied by a particular vendor during the clinical event. The system further includes the display device to display a graphical user interface showing the analytic reports.

In contrast, the DeBusk reference describes a method for tracking medical supply usage on a procedure level in a clinical setting. The method includes generating a procedural template and tracking usage of supplies against the procedure template. The method includes storing actual usage information in a retrievable manner for the purpose of analysis. *See* DeBusk reference Abstract. The DeBusk reference describes determining the percentage of supplies on the procedural template that are actually used during treatment. *See* DeBusk reference col. 18, ll. 53-60. The Heimermann reference describes a supply-based procurement system. A web-based reverse auction is provided to allow vendors to quote a price at which they will supply a desired good. *See* Heimermann reference Abstract.

Applicants respectfully assert that the combination of references does not describe “an analytic report showing a percentage of the care providers that use a clinical item supplied by a particular vendor during the clinical event” as recited in claim 1. The DeBusk reference describes analyzing the percentage of supplies on a procedural template that are actually used for treatment. *See* DeBusk reference col. 18, ll. 53-60. The DeBusk reference records preference data and usage data, but does not teach an analysis that shows a percentage of the care providers

that use a clinical item supplied by a particular vendor. Similarly, the Heimermann reference compares item prices submitted by vendors, but does not show a percentage of an entity that use a particular item. Accordingly, the combination of references does not describe “an analytic report showing a percentage of the care providers that use a clinical item supplied by a particular vendor during the clinical event” as recited in claim 1.

Thus, Applicants respectfully submit that the DeBusk and Heimermann references, either alone or in combination, fail to describe all of the limitations of dependent claim 1. Therefore, a *prima facie* case of obviousness has not been established for claim 1. Claims 2-5 and 7-10 are allowable at least by virtue of their dependency from allowable claim 1. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of claims 1-5 and 7-10.

As presently amended, claim 11 recites, a method for managing clinically related supply procurement. The method includes receiving patient supply data captured from at least one clinically related site, the patient supply data comprising items used by care providers to treat one or more patients during a clinical event. The method also includes performing comparisons between alternative supply selections, wherein the comparisons comprise percentages of care providers that use a clinical item supplied by different vendors during the clinical event. The method further includes generating a comparative report that shows the alternative supply selections and displaying the comparative report on a graphical user interface.

For reasons similar to those given with reference to claim 1, Applicants respectfully assert that the combination of references does not describe “the comparisons comprise percentages of care providers that use a clinical item supplied by different vendors during the clinical event” as recited in claim 11. Thus, Applicants respectfully submit that the

DeBusk and Heimermann references, either alone or in combination, fail to describe all of the limitations of dependent claim 11. Therefore, a *prima facie* case of obviousness has not been established for claim 11. Claims 12-15, 18-20 are allowable at least by virtue of their dependency from allowable claim 11. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of claims 11-15, 18-20.

As presently amended, claim 21 recites a method for generating a clinically related supply policy. The method includes receiving care provider preference data for a clinical event from a plurality of care providers, wherein the care provider preference data includes a clinical item used to treat a patient during the clinical event. The method also includes performing comparisons showing a percentage of the care providers that prefer the clinical item supplied by a particular vendor based on the care provider preference data. The method also includes generating a comparative report that shows the comparisons. The method further includes displaying the comparison report on a graphical user interface.

Applicants respectfully assert that the combination of references does not describe “comparisons showing a percentage of the care providers that prefer the clinical item supplied by a particular vendor based on the care provider preference data” as recited in claim 21. The DeBusk reference describes analyzing the percentage of supplies on a procedural template that are actually used. *See* DeBusk reference col. 18, ll. 53-60. The DeBusk reference records preference data and usage data, but does not teach a comparison that shows a percentage of the care providers that prefer the clinical item supplied by a particular vendor. Similarly, the Heimermann reference compares item prices supplied by vendors, but does not show a percentage of entities that prefer particular item. Accordingly, the combination of references does not describe “comparisons showing a percentage of the care providers that prefer the

clinical item supplied by a particular vendor based on the care provider preference data” as recited in claim 1.

Thus, Applicants respectfully submit that the DeBusk and Heimermann references, either alone or in combination, fail to describe all of the limitations of dependent claim 21. Therefore, a *prima facie* case of obviousness has not been established for claim 21. Claims 22-25 and 28-30 are allowable at least by virtue of their dependency from allowable claim 21. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of claims 21-25, and 28-30.

**CONCLUSION**

For at least the reasons stated above, claims 1-5, 7-15, 18-25 and 28-30 are now in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-474-6550 or johoward@shb.com (such communication via email is herein expressly granted) – to resolve the same.

The fee for a one-month extension of time is submitted herewith. It is believed that no additional fee is due with this filing. However, if this belief is in error, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112.

Respectfully submitted,

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